



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1996

Mr. Herbert L. Prouty
City Attorney
City of Denton
Municipal Building
215 East McKinney
Denton, Texas 76201

OR96-0747

Dear Mr. Prouty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39411.

The City of Denton (the "city") received a request for "[a]ny and all police calls (tapes of the calls), from 10/5/95 - 10/6/95 to the following address: 516 W. Oak Street #32, Denton, Texas 76201." You claim that the requested information is excepted from disclosure under sections 552.108, 552.103, and the informer's privilege as incorporated by section 552.101 of the Government Code. We have considered the exceptions you claimed and have reviewed the information at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a). You inform us that the requestor is currently facing prosecution for the reported offense, with a trial set for April 4, 1996. Therefore, the city has met the first prong of the section 552.103(a) test. After reviewing the audiotape, we conclude that it is related to the pending criminal litigation and the city may withhold the tape under section 552.103(a). We note that when the opposing party in the litigation has seen or had access to this information, there is no justification for withholding that information from the

requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39411

Enclosure: Submitted audiotape

cc: Ms. Rebecca M. Richmond
516 W. Oak Street
Denton, Texas 76201
(w/o enclosure)

¹As we resolve your request under section 552.103(a), we need not now address your claimed exceptions under sections 552.108 and 552.101.